

THE HONORABLE MARY JO HESTON
Chapter 7
Hearing Location: Tacoma, Washington
Hearing Date: December 19, 2019
Hearing Time: 9:00 AM
Response Date: December 12, 2019

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re:

ROSEMARY HIBBLER,

Debtor.

NO. 19-42613-MJH

MOTION FOR AN ORDER EXTENDING
THE DEADLINE FOR FILING
COMPLAINTS TO DETERMINE
DISCHARGEABILITY

I. RELIEF REQUESTED

The State of Washington, Office of the Attorney General, an interested party in the Chapter 7 bankruptcy of Rosemary Hibbler, (“Debtor”), moves the Court pursuant to Fed. R. Bankr. P. 4007 and 9013, and Local Bankruptcy Rule 9013-1, for an order extending the deadline for the AGO to file a complaint to determine dischargeability of particular debts under 11 U.S.C. § 523(a)(2), (4), or (6). The Office of the Attorney General seeks a short 60-day extension of deadlines under Fed. R. Bankr. P. 4007, through and including January 17, 2020. This Motion is supported by the Declaration of Lynda Atkins (“Atkins Decl.”), including any exhibits thereto, as well as the papers and pleadings filed in this case.

II. STATEMENT OF FACTS

On August 13, 2019, Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. Dkt. 1. On September 17 and September 30, 2019, the Chapter 7 Trustee held

STATE’S MOTION FOR AN ORDER TO
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1 Debtor's Section 341 Meeting of Creditors (together, the "341 Meeting"). *See* Dkt. 8. Currently,
2 the deadline to file a complaint to determine dischargeability under 11 U.S.C. § 523(a)(2), (4),
3 or (6) in Debtor's Chapter 7 case is November 18, 2019. *Id.*

4 Debtor's schedules do not identify the Office of the Attorney General, or the State of
5 Washington, as a creditor. *See* Dkt. 1. Consequently, the Consumer Protection Division of the
6 AGO ("AGO") did not learn of Debtor's Chapter 7 case until after the first meeting of creditors.
7 Atkins Decl. ¶ 2. Upon learning of Debtor's Chapter 7 case, the AGO promptly entered an
8 appearance as an interested party, on November 5, 2019. *See* Dkt. 31.

9 The AGO is currently in the midst of an investigation involving Debtor, including
10 without limitation her involvement with Veterans Independent Enterprises of Washington
11 (V.I.E.W.), a Washington Public Benefit Corporation, and allegations involving Debtor's misuse
12 of V.I.E.W.'s assets. The AGO's investigation thus-far implicates potential claims against
13 Debtor that arose prior to the commencement of this case and may be non-dischargeable pursuant
14 to 11 U.S.C. § 523(a)(2), (4), or (6).

15 The AGO is diligently pursuing its investigation of potentially non-dischargeable claims
16 against Debtor. In her 341 Meeting, Debtor refused to answer questions relating to V.I.E.W.,
17 which may require the AGO to seek authorization for its own Rule 2004 examination(s). Atkins
18 Decl. ¶¶ 7-8, 12. The AGO intends to review the U.S. Trustee's recent Rule 2004 examination
19 of Debtor, upon receipt of the transcript. However, given that the AGO learned of Debtor's
20 bankruptcy only two weeks ago, it cannot properly investigate and prepare a complaint for non-
21 dischargeability before the existing deadline to assert such claims expires in this case. The AGO
22 seeks a brief 60-day extension of the deadline set forth under Fed. R. Bankr. P. 4007 to preserve
23 its ability to commence a non-dischargeability proceeding pursuant to 11 U.S.C. § 523(a)(2),
24 (4), or (6) as necessary or appropriate under the circumstances.

III. LEGAL ARGUMENT

Fed. R. Bankr. P. 4007 imposes a strict 60-day time limit for filing complaints to determine dischargeability of debts listed in 11 U.S.C. § 523(c). Fed. R. Bankr. P. 4007(c); *see In re Kennerley*, 995 F.2d 145, 146 (9th Cir. 1993). Absent a motion to extend time made before the 60-day limit expires, the time cannot be extended. *See id.* (citing *Anwiler v. Patchett*, 958 F.2d 925, 927 (9th Cir.), cert. denied, 506 U.S. 882 (1992)). The Ninth Circuit strictly construes FRBP 4007 and has “repeatedly held that the sixty-day time limit for filing nondischargeability complaints under 11 U.S.C. § 523(c) is strict and, without qualification, cannot be extended unless a motion is made before the 60-day limit expires.” *Anwar v. Johnson*, 720 F.3d 1183, 1187 (9th Cir. 2013) (internal quotations omitted); *see also Willms v. Sanderson*, 723 F.3d 1094, 1100 (9th Cir. 2013). On motion of a party in interest, after hearing on notice, the court may for cause extend the time under Fed. R. Bankr. P. 4007(c). The AGO files this motion to extend time as “a party in interest.”

Under Fed. R. Bankr. P. 4007(a), “any creditor may file a complaint to obtain a determination of dischargeability.” A “‘creditor’ is an ‘entity that *has* a claim against the debtor . . .” [11 U.S.C.] § 101(9)(A) (emphasis added). There is no requirement that said claim be filed or allowable.” *Cosper v. Frederick*, 73 B.R. 636, 637 (Bankr. N.D. Fl. 1986). The AGO’s request to extend the non-dischargeability deadline is necessary and timely pursuant to Fed. R. Bankr. P. 4007(c) and well-settled Ninth Circuit law, as the current deadline in this case is November 18, 2019.

The AGO should be granted relief from the existing non-dischargeability deadline, given that it learned of Debtor’s Chapter 7 case—commenced on August 13, 2019—only two weeks ago. Atkins Decl. ¶ 2. Upon learning of Debtor’s Chapter 7 case, the AGO promptly entered an appearance and took immediate steps to review the docket, request available information regarding Debtor’s financial affairs, investigate Debtor’s alleged misuse of V.I.E.W. assets by reviewing recordings of Debtor’s 341 Meetings, and request a transcript of the U.S. Trustee’s

1 recent Rule 2004 examination of the Debtor. *Id.* ¶¶ 2, 6, 11. The AGO is actively investigating
2 other matters that may implicate claims against the Debtor that are subject to a complaint to
3 determine dischargeability under 11 U.S.C. § 523(a)(2), (4), or (6). Having only learned of
4 Debtor's bankruptcy case two weeks ago—more than two months after Debtor's commencement
5 of this case—the AGO requires more time to adequately evaluate potential non-dischargeability
6 claims. A 60-day extension of time is reasonable under the circumstances.

7 IV. CONCLUSION

8 The Office of the Attorney General respectfully requests that this Court enter an Order
9 pursuant to Fed. R. Bankr. P. 4007 extending the deadline for filing complaints under Fed. R.
10 Bankr. P. 4007(a) and to determine dischargeability of debts subject to Fed. R. Bankr. P. 4007(c)
11 for 60 days, through and including January 17, 2020.

12 DATED this 15th day of November, 2019.

13 ROBERT W. FERGUSON
14 Attorney General

15 /s/ Lynda Atkins

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